

EXHIBIT 3

these improvements above and at the fairness hearing.

Moreover, the negotiations were supervised by a highly experienced mediator who has done an extraordinary job in this case. The mediator has guided the parties toward this Settlement by tenaciously encouraging them to stick to the task through seventeen separate mediation sessions and a number of other conferences with counsel. In light of all this, the court does not hesitate in finding that this Settlement is the product of informed, arms-length negotiations.

2. The *Bennett* Factors

a. The Likelihood of Success at Trial

“The likelihood of success on the merits is weighed against the amount and form of relief contained in the settlement.” *Lipuma v. American Express Co.*, 406 F.Supp.2d 1298, 1319 (S.D. Fla. 2005). In evaluating this factor, the court should not reach any ultimate conclusions with respect to issues of fact or law involved in the case. “The very uncertainty of outcome in litigation, as well as the avoidance of wasteful litigation and expense, lay behind the Congressional infusion of a power to compromise.... [Settlements] could hardly be achieved if the test on hearing for approval mean establishing success or failure to a certainty.” *Knight v. Alabama*, 469 F.Supp.2d 1016, 1033 (N.D. Ala. 2006) (quoting *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 212 (5th Cir. 1981)).

The only decision that has been made by this court relating to the merits of this action was to deny Defendant’s initial motion to dismiss. However, that decision merely held that “the class claims

done here. Thank you, Your Honor.

The court was very impressed with Mr. Davis and fully appreciates both his candor and advocacy. Nevertheless, the court is mindful that this Settlement, although not perfect, provides valuable consideration and benefits for the Class Members, and does so with finality and certainty. That is, it can always be said by those acting as Monday Morning quarterbacks that a settlement could be improved with this tweak or that one. But the fact remains that while this settlement (like all others) is not perfect, it is fair, adequate, and reasonable.